

## **Minutes of the Special and Regular Meeting of August 14, 2007**

One Twin Pines Lane, Belmont, California

### **SPECIAL MEETINGS**

#### **CLOSED SESSION - 6:00 P.M.**

- A. Conference with Legal Counsel, Existing Litigation, GC section 54956.9(a), one case, City of Belmont v. Hummel
- B. Conference with Legal Counsel regarding Anticipated Litigation, pursuant to G.C. Section 54956.9(b), one case
- C. Conference with Real Property Negotiator, Jack Crist, pursuant to G.C. Section 54956.8: 3 parcels, APN 045-244-150 and 045-244-160, and 045-244-010, and associated alleyway right-of-way, concerning price and terms of payment
- D. Conference with Labor Negotiator, Jack Crist, pursuant to Government Code Section No. 54957.6: AFSCME and MMCEA
- E. Conference with Real Property Negotiator, Jack Crist, pursuant to G.C. Section 54956.8: one parcel, APN 045-380-010, concerning price and terms of payment

Attended by Councilmembers Dickenson, Feierbach, Mathewson, Lieberman, City Manager Crist, City Attorney Zafferano, Human Resources Director Sam, Public Works Director Davis, Community Development Director de Melo, Police Chief Mattei, and Labor Negotiator Fran Buchanan. Councilmember Warden was absent, and City Clerk Cook was excused from attending.

**ADJOURNMENT** at this time, being 7:25 P.M.

**Terri Cook**

**City Clerk**

This meeting not tape recorded or videotaped.

## **REGULAR MEETING**

**CALL TO ORDER 8:25 P.M.** (Regular RDA Meeting preceded)

### **ROLL CALL**

COUNCILMEMBERS PRESENT: Dickenson, Lieberman, Feierbach, Warden (arrived 7:35 p.m.), Mathewson

COUNCILMEMBERS ABSENT: None

Staff Present: City Manager Crist, Deputy City Attorney Rubens, Community Development Director de Melo, Police Chief Mattei, Finance Director Fil, Human Resources Director Sam, Public Works Director Davis, Co-Interim Parks and Recreation Directors Ourtiague and Brunson, City Clerk Cook.

### **REPORT FROM CLOSED SESSION**

City Attorney Zafferano stated that no action was taken during the Closed Sessions held earlier.

### **PUBLIC COMMENTS AND ANNOUNCEMENTS**

**Mary Ridge**, Belmont resident, commented regarding vandalism to her fence and other areas in her neighborhood. The Police Department made her wait when she came to file a report, and then she was told it was not vandalism, which created issues for her insurance claim. She has not received an answer from the fire department on questions she had of them. She noted that seniors are treated poorly by the Police Department.

**Ruth Waters**, Peninsula Museum of Art, suggested that the City sponsor an Avenue of the Arts banner across Ralston Avenue to be hung when the banner poles are not in use for other activities. She outlined the various arts organizations located in Belmont.

**Linda Lara**, San Mateo resident, thanked the City Council for its previous position regarding the Bay Meadows project. This project will have an impact on Belmont traffic, and would also create additional

air pollution. She noted that Marin County has taken action to prevent future growth. She also noted that San Mateo's referendum is currently before the Court of Appeals. She requested that the Belmont City Council contact the San Mateo City Council and the County Board of Supervisors to reiterate its non-support of the Bay Meadows project.

#### **COUNCIL MEMBER COMMENTS AND ANNOUNCEMENTS**

Mayor Feierbach announced that the Parks and Recreation Department would be holding a Family Movie Night on August 17<sup>th</sup> in Twin Pines Park. She noted that the second Council meeting in August is canceled for a summer recess. She recently attended the Nikon Corporation's 25<sup>th</sup> anniversary celebration in the City of Belmont where a pair of binoculars was given to the City as a gift. She stated that Nikon has been a positive presence in the City.

Councilmember Dickenson described San Mateo County's new Alert system wherein residents can sign up to receive alerts via a variety of media regarding a number of emergency issues.

#### **AGENDA AMENDMENTS**

Mayor Feierbach noted that Item 6-A (Continued Discussion and Direction Regarding Smoking Ordinance) would be taken out of order and considered immediately following the Consent Calendar and before Public Hearings.

#### **CONSENT CALENDAR**

Councilmember Mathewson requested removal of Consent Item 4-I (Resolution Amending the Master Fee Reschedule Regarding Photovoltaic (Solar Panel) Permit Fees) for separate consideration.

Mayor Feierbach stated that discussion of this item would be deferred to the end of the meeting.

Councilmember Dickenson recommended that residents take note that Item 4-B(2) addresses the new Crystal Springs Bypass Tunnel, since it may have an effect on the City of Belmont.

#### **ITEMS APPROVED ON CONSENT**

**Approval of** Minutes of Special and Regular Meetings of June 26, 2007, July 10, 2007, and July 24, 2007;  
Approval of Amendment to Minutes of June 12, 2007

**Acceptance of** Written Communication: 1) Received July 27, 2007, Notice of EIR and Notice of Public Scoping Meetings, Habitat Reserve Program; 2) Received August 8, 2007, Notice of Availability of Draft EIR for New Crystal Springs Bypass Tunnel

**Motion** Appointing Voting Delegate for the League of California Cities Annual Conference

**Approval of** Resolution 9906 Terminating the California Public Entity Insurance Authority Joint Powers Agreement

**Approval of** Resolution 9907 Approving the Purchase of One 12-Yard Combination Sewer Cleaner from Ricker Machinery Company for an Amount not to Exceed \$329,173.10

**Approval of** Resolution 9908 Authorizing the Police Chief to Accept a Private Donation of \$500.00 to Benefit the Belmont Police Department's K9 Program

**Approval of** Resolution 9909 Approving the Summary Vacation of a Portion of a 7-foot Sewer Easement Over and Across a Portion of Lot 39, Block 104, in the Belmont Country Club Properties, Subdivision No. 10 – 2932 San Juan Boulevard (APN 043-173-330)

**Approval of** Resolution 9910 Approving Plans and Specifications, Authorizing Advertisement for Sealed Bids, Approving Award of Contract to the Lowest Responsible Bidder for an Amount not to Exceed \$180,000, Approving a Construction Contingency not to Exceed \$18,000, and Authorizing the City Manager to Execute a Contract for the Chula Vista Street Light Project, City Contract Number 469

**Adoption of** Ordinance 1031 Revising the City's Sewer Charges (2<sup>nd</sup> reading and adoption)

**ACTION:** On a motion by Councilmember Dickenson, seconded by Councilmember Warden, the Consent Agenda was unanimously approved, as amended, by a show of hands.

#### **OLD BUSINESS (Item out of order)**

#### **Continued Discussion and Direction Regarding Smoking Ordinance**

City Attorney Zafferano reviewed the six issues still remaining for direction in a new ordinance governing smoking: 1) streets and sidewalks, 2) determination of reasonable distance, 3) multi-unit housing, 4) phase-in period, 5) lease addendum requirement, and 6) HUD (Housing and Urban Development) Housing requirements.

Mayor Feierbach suggested that townhouses should be treated as single-family homes for purposes of this ordinance.

**Becky Husman**, representing some Bonnie Brae residents, expressed support for the efforts of the Council on this issue. She recommended 30 feet as a reasonable distance.

**George Mozingo**, San Mateo County Association of Realtors, expressed support for reasonable regulations, but is concerned regarding a prohibition on smoking in individual homes, since people have constitutional rights, and smoking is a permitted activity. The proposed ordinance contains an unequal distinction between single-family homes and condos or townhouses. He expressed support for the lease agreement clause, but noted this clause is not provided to condominium owners. Condo associations would be at risk for liability because of enforcement issues.

**Serena Chen**, American Lung Association, stated that the City of Belmont is being watched by other cities over this issue. She stated she was proud of the leadership of the Council on this matter. She recommended the inclusion of condos and townhouses in the smoking ban. Her organization is working with HUD to address a smoking ban through house rules. Smoking is a public health issue, and smokers are not a protected class. She noted that a 12- or 14-month phase-in period is reasonable.

**Keisha Nzewi**, American Heart Association, expressed support for any legislation which would reduce the exposure to second-hand smoke. She recommended a 20- to 25-foot buffer for doors and windows. She noted that shared walls can be an issue in multi-unit housing.

**Papia Gambelin**, California Tri-County Housing Association, recommended the 12- or 14-month phase-in period. Her organization advocates that owners of apartment buildings be allowed to voluntarily declare their buildings to be smoke-free. She noted that other cities are adopting proclamations to this effect rather than mandating it through ordinances.

**Edith Cabulslay**, San Mateo County Health Department, noted that tobacco is the number one cause of death in San Mateo County. Second-hand smoke is an issue. She supports a ban in any multi-unit housing that contains shared walls.

**Michon Coleman**, San Mateo County Association of Realtors, stated that her association recognizes there is no right to smoke. She noted there is a constitutional right to privacy.

Discussion ensued regarding various components of the ordinance. Council concurred to allow smoking on sidewalks except in proximity to outdoor eating areas. Council also concurred to ban smoking on sidewalks at City-sponsored special events, and if the event is private, the organizer would have the option to allow smoking, such as for a block party.

**Ophelia Vallejo**, no residence address given, recommended banning smoking in bus shelters. She noted that San Mateo County General Hospital bans smoking between 25-30 feet from all entrances to the hospital.

Council concurred to ban smoking in all outdoor eating areas and to set 20 feet as a reasonable distance for doorways and windows.

Discussion ensued regarding multi-unit housing.

Mayor Feierbach stated that townhouses should be exempt if there is only one shared wall.

Councilmember Mathewson supported a ban on any units with shared walls, a common HVAC (heating, ventilation, air conditioning) system, or adjoining decks.

Councilmember Dickenson stated that owners of apartment buildings or condos should be the ones to determine whether or not smoking is permitted in the unit.

Councilmember Lieberman stated that this issue is one of recourse regarding second-hand smoke intrusion. He does not support an outright ban on smoking, but prefers to address second-hand smoke.

**RECESS: 10:00 P.M.**

**RECONVENE: 10:15 P.M.**

Mayor Feierbach noted that the Public Hearing would be taken up at this time before returning to the discussion regarding the smoking ordinance.

## **HEARINGS**

**Public Hearing to Consider the City's Intention to Vacate, Abandon and Relocate the Emmett House, a Locally-Designated Historic Landmark, from a Commercial Site at 843 Ralston Avenue to 1000 O'Neill Avenue (APN: 045-261-010, APN: 045-261-020, and APN: 045-261-030)**

Contract Planner Ouse reviewed the actions taken to date regarding the moving of the Emmett House, and she reviewed the entitlements yet to be made. She noted that the issue before the Council this evening is the vacation of right-of-way (ROW) to accommodate the building on the new site. She reviewed the proposed new property line and associated easements. She noted the Planning Commission had expressed concern regarding the storm drain easement, and could find no compelling reason to vacate the ROW. The Commission also expressed concern regarding control of the land, and suggested that the ROW be conveyed back to the city after the building is moved. She noted that some protected trees are affected by the ROW vacation. The existing fence would be relocated. A meandering sidewalk is planned as a way to protect trees. She reviewed the findings to be made.

Mayor Feierbach opened the Public Hearing.

**Aldo Trevisan**, Belmont resident, requested similar provisions for his property such as the additional footprint gained by the vacation of right-of-way for the Emmett House.

**ACTION:** On a motion by Councilmember Mathewson, seconded by Councilmember Dickenson, the Public Hearing was unanimously closed by a show of hands.

Mayor Feierbach stated that it is her desire to not straighten Sixth Avenue at this location.

**ACTION:** On a motion by Councilmember Mathewson, seconded by Councilmember Dickenson, Resolution 9911 Vacating Portions of Sixth Avenue and O'Neill Avenue, the Frontage of 1000 O'Neill Avenue (Emmett House Site), was unanimously approved by a show of hands.

### **Continued Discussion and Direction Regarding Smoking Ordinance (continued)**

Councilmember Mathewson expressed support for a ban in multi-unit, multi-story buildings, and noted that the ban should continue for any future condominium conversions.

**ACTION:** Councilmember Mathewson made a motion, seconded by Councilmember Warden, to ban smoking in multi-story, multi-family housing.

Discussion ensued regarding the definition of multi-unit, multi-story dwellings.

Mayor Feierbach noted that the ban should not affect multi-unit housing such as townhouses, which share only a common wall but do not share a floor or ceiling with another family.

Councilmember Lieberman stated that this was inconsistent with testimony heard by the Council in that there were complaints of smoke drifting from side-by-side properties.

Councilmember Warden stated that people often engage in illegal activity that is never enforced because it does not bother anyone. He noted that smoking is likely to occur in areas where it is banned, such as apartments, and it will never be reported because it does not bother anyone.

**ACTION:** On the earlier motion made by Councilmember Mathewson, said motion passes by a roll call vote (3-2, Dickenson, Lieberman no).

**MEETING EXTENSION:** At this time, being 10:30 P.M., on a motion by Councilmember Mathewson, seconded by Councilmember Dickenson, the meeting was unanimously extended to 11:00 P.M. by a show of hands.

**ACTION:** On a motion by Councilmember Dickenson, seconded by Councilmember Lieberman, and approved by a show of hands (4-1, Warden no) to implement a 14-month phase-in period for the



smoking ban in multi-unit housing, in order to accommodate one-year leases which may have just been enacted at the time of the ban.

City Attorney Zafferano explained the verbiage of the no-smoking provision that is recommended for all lease agreements. He noted that tenants can be third-party beneficiaries and can sue if another lease is being broken.

**Papia Gambelin**, California Tri-County Housing Association, stated that this lease language is already available for landlords to use, and requested that the use of this language not be imposed as redundant.

City Attorney Zafferano noted that it could be a tool for landlords to give notice to tenants of a future ban, considering the 14-month phase-in period.

**ACTION:** On a motion by Councilmember Mathewson, seconded by Councilmember Warden, and approved by a show of hands (4-1, Dickenson no) to require inclusion of the no-smoking provision verbiage in all new lease agreements.

City Attorney Zafferano noted that this concluded all the remaining outstanding issues relative to the draft ordinance, and that the next step would be to set a Public Hearing for introduction of an ordinance.

## **OLD BUSINESS (Continued)**

### **Discussion and Direction Regarding Holiday Tree Proposal**

Co-Interim Parks and Recreation Director Brunson reviewed the previous discussion regarding this subject from a year ago.

Parks and Recreation Supervisor Doherty reviewed the options and proposals regarding various trees to be used in Twin Pines Park. She noted that power would soon be available to accommodate any of the trees chosen.

Councilmember Mathewson expressed support for the large tree. He noted that if white lights are installed, it could be used for other events throughout the year. The large tree would focus on the Civic Center complex and would be a draw for the community and a source of civic pride. He recommended Option A.

Councilmember Dickenson stated that residents would support this concept, including a special event to kick it off. He concurs regarding Option A.

Councilmember Lieberman stated this project should be done right, and he suggested seeking sponsors to defray costs. He commented that this will be a wonderful thing for the community.

Mayor Feierbach concurred, and expressed support for the special event as well.

Council concurred to support Option A and to include the “Belmont Sings” special event to commemorate the tree lighting.

**Discussion and Direction Regarding City Staff New Position Request, Reclassifications and Departmental Reorganizations (continued from 7/10/07)**

City Manager Crist stated that for four new positions are not included in the proposal at this time, but the request to reclassify seven positions are requested by various departments, and have been included in the current year budget. These reclassifications will be brought forward for formal approval throughout the fiscal year. The new positions will be discussed during the mid-year budget review.

City Manager Crist noted that several positions were eliminated during lean budget years, which need to be revisited. He is seeking feedback at this time.

Councilmember Warden stated that an Informational Services (I.S.) Director is needed, and he recommended phasing in the salary increase. He noted that a Revenue Manager should pay for him or herself with additional revenues. He concurs regarding the other recommendations in the report.

Councilmember Lieberman suggested a future review as to which code enforcement should belong. He would like additional information regarding the I.S. Director position.

Councilmember Mathewson concurred with Councilmember Warden regarding the need for an I.S. Director, and expressed support for the Revenue Manager position. He noted that revenues from the future red light camera program could fund an additional police officer. He expressed concern regarding Councilmember Lieberman's suggestion to move code enforcement to another department, but is willing to study this.

Councilmember Dickenson stated that an assessment by a third party is recommended for these positions. He expressed concern regarding the large salary increase outlined for the I.S. Director.

City Manager Crist noted that an informal survey indicated that the current pay is well below the median for this position.

Mayor Feierbach stated that I.S. should be its own department with a department head. She concurred regarding the potential for using red light camera revenues for additional police. She is concerned regarding moving code enforcement out of the Community Development Department.

#### **Discussion and Direction Regarding Master Fee Schedule**

This item was continued to September 11, 2007.

#### **NEW BUSINESS**

**Resolution Authorizing Award of Bid to Hunter Construction for Tenant Improvements on City Hall Suites 104 and 105 for an Amount Not to Exceed \$62,260 and Confirmation on Leasing Approach**

This item was continued to September 11, 2007.

#### **MATTERS OF COUNCIL INTEREST/CLARIFICATION**

**Consideration of amending stipend/benefits for City Treasurer to match those provided to City Council Members (Mathewson)**

This item was continued to September 11, 2007.

**Consideration of requiring all FAR (floor area ratio) exceptions to go through variance process rather than just an exception process (Mathewson)**

This item was continued to September 11, 2007.

**Consideration of ordinance addressing abandoned shopping carts (Dickenson)**

This item was continued to September 11, 2007.

**Options regarding Pedestrian/Bike Bridge over Highway 101 (Dickenson)**

This item was continued to September 11, 2007.

**CONSENT CALENDAR ITEM CONTINUED FROM EARLIER**

**Resolution Amending the Master Fee Reschedule Regarding Photovoltaic (Solar Panel) Permit Fees**

This item was continued to September 11, 2007.

**ADJOURNMENT** at this time, being 11:00 p.m.

**Terri Cook**

**City Clerk**

